

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MINNIE TAYLOR, Individually and
as Personal Representative of
the ESTATE OF LOUIE TAYLOR,
and HAROLD CUTHAIR,

Plaintiffs,

vs.

Case No.

21-cv-00613-GJF-JFR

THE UNITED STATES OF AMERICA,

Defendant.

DEPOSITION OF VIRGINIA E. HARVEY, M.D.

March 25, 2022

8:30 a.m.

via videoteleconference

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MS. CHRISTINE H. LYMAN

Attorney for the Defendant

REPORTED BY: MABEL JIN CHIN, NM CCR #81

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<p style="text-align: right;">10</p> <p>1 A. Yes.</p> <p>2 Q. Your current expert fee schedule, can I do</p> <p>3 the same for that?</p> <p>4 A. Yes.</p> <p>5 Q. Any invoices from and/or records of payment</p> <p>6 to any contractor, assistant, or any other person who</p> <p>7 assisted you in preparing your opinions. Did anybody</p> <p>8 assist you in preparing your opinions?</p> <p>9 A. I do not.</p> <p>10 Q. And your expert report dated January 18,</p> <p>11 2022, and any updates, addenda, or supplements to your</p> <p>12 expert report. I believe I have one addendum to your</p> <p>13 report. Are there any others?</p> <p>14 A. There are not.</p> <p>15 Q. A list of cases in which you have testified</p> <p>16 in the last four years as an expert, and I believe</p> <p>17 there are none; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. A list of publications you have authored or</p> <p>20 coauthored in the last 10 years. There is a list in</p> <p>21 your CV. Is that a current list?</p> <p>22 A. It is.</p> <p>23 Q. Copies of any publications you have written</p> <p>24 or written by others that you believe are germane to</p> <p>25 the issues in this lawsuit or that you relied on in</p>	<p style="text-align: right;">12</p> <p>1 submitted my report and addendum, and those include</p> <p>2 the video footage that I had not previously seen prior</p> <p>3 to my submission of my report.</p> <p>4 Q. Is it fair to say that since you did not</p> <p>5 receive these materials, you didn't rely on them in</p> <p>6 forming your opinions in the report and addendum?</p> <p>7 A. I did not rely on them, but they do not</p> <p>8 change my opinion.</p> <p>9 Q. Okay. That's helpful.</p> <p>10 All documents you used to support the</p> <p>11 opinions and conclusions you reached in this case, and</p> <p>12 any updates and addenda. Do you believe that all the</p> <p>13 documents you used to support your opinions and</p> <p>14 conclusions are reflected in the list of materials in</p> <p>15 both your report and addendum?</p> <p>16 A. Yes.</p> <p>17 Q. And then your billing file for this case,</p> <p>18 including any and all invoices or other information</p> <p>19 relating to compensation that you have submitted to</p> <p>20 plaintiff's counsel. I am not sure what the last</p> <p>21 invoice was that you submitted, but are there any</p> <p>22 outstanding invoices?</p> <p>23 A. There are not.</p> <p>24 Q. Okay. And do you recall when the last</p> <p>25 invoice was that you sent to plaintiff's counsel?</p>
<p style="text-align: right;">11</p> <p>1 forming your opinions. I have not seen anything like</p> <p>2 this, although there are some articles cited in your</p> <p>3 report. Are you able to provide me with copies of</p> <p>4 these articles?</p> <p>5 A. I am.</p> <p>6 Q. Okay. Copies of all literature cited in</p> <p>7 your expert report. I think it's kind of redundant,</p> <p>8 but the same goes for this as well.</p> <p>9 All documents you received in this case from</p> <p>10 plaintiff's counsel or any other source. I believe I</p> <p>11 have some -- a list of documents that were provided to</p> <p>12 you. But do you have any notes, or anything taken on</p> <p>13 any hard copies that were sent to you?</p> <p>14 A. No.</p> <p>15 Q. Any communications between you and counsel</p> <p>16 identifying facts or data or assumptions that you</p> <p>17 relied upon in your expert report. Do you believe we</p> <p>18 have everything responsive to this number 7?</p> <p>19 A. I do.</p> <p>20 Q. And number 8, the records, depositions, and</p> <p>21 any other materials you reviewed when forming your</p> <p>22 opinions in your expert report. Are all of these</p> <p>23 materials reflected in the materials listed in your</p> <p>24 report and addendum?</p> <p>25 A. Um -- I received some materials after I had</p>	<p style="text-align: right;">13</p> <p>1 A. I can look it up if you would like me to.</p> <p>2 Q. Sure. And for the record, what are you</p> <p>3 looking at off to the side?</p> <p>4 A. I am looking at the copy of the</p> <p>5 correspondence that you received that I have also</p> <p>6 received.</p> <p>7 Q. Okay. And so just to be clear, I think that</p> <p>8 Mr. Buffington's office sent me a four-page supplement</p> <p>9 to that over E-mail maybe a day or two ago. I don't</p> <p>10 know if you have had a chance to see that, but we'll</p> <p>11 review that in case you haven't.</p> <p>12 A. I do not recall receiving anything a day or</p> <p>13 two ago from their office.</p> <p>14 Q. Okay.</p> <p>15 A. His office.</p> <p>16 Q. Okay. But feel free to look at what you</p> <p>17 have and let me know if you think anything is missing.</p> <p>18 A. Okay. I do not think anything is missing.</p> <p>19 The date on the last invoice that I see here is from</p> <p>20 2/7/2022.</p> <p>21 Q. And is that the last, I guess, billable work</p> <p>22 that you did for the firm?</p> <p>23 A. That was when I submitted my addendum, and I</p> <p>24 have not done any other significant work since that,</p> <p>25 as far as I recall, aside from some very, very short</p>

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A. I think if he was hallucinating and agitated he would have benefited from a medical evaluation.

Q. Okay. And then when you say appropriate medical care, are you assuming that is a type of medical care that you said that you would provide if you had seen Mr. Taylor that day?

A. Yes.

Q. Okay. Now, I would like to now move to your addendum report, and I am going to put it up in just a second here.

A. Sure.

Q. Let me make it a little bit bigger.

So, this addendum report, does this look like the addendum report you drafted on or about February 7, 2022?

A. Yes.

Q. Okay. And is that your signature at the bottom here?

A. It is.

MS. LYMAN: Okay. Mabel, I would like to mark this as Exhibit 7.

(Exhibit 7 marked.)

Q. (By Ms. Lyman) So, I notice up here that you cite additional -- you say since submission of your original report, you have been provided and have

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A. I mean, certainly I have a differential diagnosis that -- but it's difficult to kind of rule things out or rule things in based on not seeing Mr. Taylor.

Q. Okay. And not having things like labs, for example?

A. Right.

Q. Okay. So, you talk about hyperthermia, which we discussed. You say it's a "well-known and treatable complication of methamphetamine toxicity which can itself lead to respiratory failure, cardiac failure seizures, kidney injury, and severe electrolyte imbalance, which can ultimately result in PEA and death." What is PEA?

A. PEA is an acronym for pulseless electrical activity.

Q. And how does hyperthermia cause PEA?

A. So, hyperthermia can lead to these complications. You can become acidemic, you -- which can lead to PEA. You can have rhabdo, become hyperkalemic, kidney failure, and they can all lead to a pulseless electrical activity.

Q. And so, that was the condition Mr. Taylor was in when the EMTs came?

A. Yes, as far as I know.

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reviewed the following document, and it is the EMS report; is that right?

A. Yes.

Q. And is that the only information that you received that you considered in formulating this opinion in your addendum?

A. Yes.

Q. Okay. Now, what you say here, you provided Summary, and this is taken from the EMS report; is that correct?

A. Correct.

Q. And so I'd just like to turn to the Discussion. You say "Prior to his death, Mr. Taylor was displaying symptoms of moderate to severe methamphetamine toxicity as manifested by his significant psychomotor agitation, hallucinations, and paranoia." And just -- I think we touched on it earlier, but this is just based on what you have seen in the record; correct?

A. Yes.

Q. And there was no effort to do any kind of differential diagnosis because -- well, could you even do a differential diagnosis of him at this point?

A. Based on what I saw in the record?

Q. Yes.

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Q. And does PEA indicate any kind of cardiac event happening, in your experience?

A. So, PEA is a lot of different etiologies. It can be cardiac. Cardiac can also cause ventricular fibrillation and ventricular tachycardia.

Q. So, just knowing that somebody is found in a state of PEA, there's no way to tell necessarily what is causing the PEA?

A. No. So, if somebody is in the hospital you go through something called your Hs and Ts. You think of -- for H -- and this is not exhaustive -- there is hypoxemia, there's, you know, hyperthermia. For Ts there's thrombosis, there's tension pneumothorax. So there are multiple things can cause PEA, and it's difficult to determine exactly which one caused it without doing a more thorough evaluation.

Q. So, down here you say "It is my opinion to a reasonable degree of medical certainty that Mr. Taylor's hours-long period of psychomotor agitation, described as kicking, punching, yelling and pacing, while being contained in a cell described by a medical professional as," quote, "like a sauna," end quote, "placed Mr. Taylor at a very high risk for severe methamphetamine-associated hyperthermia, which is life threatening but treatable with timely and